Address by the High Representative for Bosnia and Herzegovina, Wolfgang Petritsch, to the Political Affairs Committee of the Council of Europe

Mr. Chairman, Excellencies,

I am most grateful for this opportunity to share with you my thoughts about the implementation of the Dayton Peace Agreement, and Bosnia and Herzegovina's integration into the family of European nations and institutions; in particular, its application for membership of the Council of Europe.

As High Representative, one of my primary responsibilities is to monitor the implementation of the Peace Agreement and to coordinate and guide the activities of the international civilian organisations, and agencies present on the ground in Bosnia and Herzegovina.

I wish to say from the outset that I share the Council of Europe's vision of a fully "European" Bosnia and Herzegovina. And – let me be explicit – I fully support the idea of Bosnia and Herzegovina joining the Council of Europe. Accession to the Council will be a step of crucial significance for the country, the first real milestone on the road to Europe.

Already the conditions for another milestone have been put in place; in March of this year Commissioner Patten handed the BiH authorities a road map of conditions for a feasibility study for EU membership. I would hope that all of us can

ensure that our approach and decisions are reinforcing each other as well as being mutually beneficial and conducive to outlining a sensible timeline for BiH integration into Europe.

Now, as you know, certain conditions were laid down before the leaders of Bosnia and Herzegovina – conditions that must be met before Bosnia and Herzegovina can be allowed to accede to the Council of Europe.

These conditions were carefully selected by the Council of Europe, in close coordination with my Office. They were not selected at random. In the opinion of experts from across the International Community, the fulfillment of these conditions is a basic requirement for beginning to establish a functioning state which respects the Rule of Law. Before they are fulfilled, Bosnia and Herzegovina cannot be said truly to be on the road to Europe.

To date, it is a sad fact that far too many of these preconditions remain unfulfilled; and I believe that we must insist that conditions are fulfilled before accession to the Council of Europe can be considered.

Once we have conditions met which confirm that Bosnia and Herzegovina is a functioning state, capable of governing itself for the good of its citizens, the country will have more than one foot in the door.

I will return later in my remarks to the priority conditions which I believe will help you to assess when Bosnia and Herzegovina is ready to join your family.

This could happen tomorrow, if Bosnia and Herzegovina's ruling parties can find the political will which is so badly missing.

Before I go any further, I should emphasize that I do not wish to sound too gloomy. In the four and half years since Dayton, there has been substantial progress.

First and foremost, a cruel and tragic war that inflicted untold damage on the people of Bosnia and Herzegovina has come to an end. Peace – and a sound security environment – have been established by the international military presence.

This has allowed for physical reconstruction, a large number of refugee returns, the establishment of common institutions, and some progress in the transformation of the old communist command structure into a market-oriented economy.

But let me be very frank with you. None of the achievements are self-sustaining. Not one! And that is what worries all of us.

The International Community has been confronted with the prospect of an engagement that still has no visible end.

Nevertheless, with many other crises in the world in need of attention, the International Community is seeking to reduce its presence in Bosnia and Herzegovina. Donor fatigue has set in. NATO has basically finished the process of reducing SFOR troop levels by a third; scant resources must be redirected elsewhere.

What is the reason for the failure to achieve self-sustainability? I have said it before, and will say it again: the ruling political classes are not taking responsibility for their country in the way that they should.

The difficulty is this. The main political parties still rule Bosnia and Herzegovina along ethnic lines. They are interested in political power, not because it allows them to serve the interests of all citizens of Bosnia and Herzegovina, but because it allows them to pursue their own ethnic agendas.

And so the politicians naturally tend to cater to the needs of their party structures, rather than to the needs of the ordinary people that belong to the ethnic group whose interests they claim to defend.

As long as there is no political will to compromise, there can be no substantial progress on the issues of reform. At present, ruling politicians do not only not cooperate – they even go so far as to obstruct reforms which, in their view, would undermine the conservation of territorial gains made during the war.

How does this lack of political will translate into our everyday work? In practice, we are faced with three parallel political power structures. State-level institutions are not taken seriously by the ruling politicians. Instead, they are used as fig-leaves for policies that serve purely ethnic interests.

Let me give you an example of the functioning of one of the highest decision-making bodies in Bosnia and Herzegovina.

The Council of Ministers, as defined by the Dayton Constitution, is supposed to be the country's executive body. For it to work effectively, it was found necessary to do away with ethnic parity, and the system of rotation found elsewhere – for example, in the Presidency.

Of course, that was not acceptable to the parties back in 1996. At the beginning of 1997, therefore, a compromise was reached in order to get this new institution – revolutionary for Bosnia and Herzegovina at the time – off the ground. The solution comprised two rotating co-chairs and, for parity reasons, a vice-chair.

This arrangement, never stipulated at Dayton, was eventually questioned before the Constitutional Court. In August last year, the Court ruled that the tripartite set-up was indeed unconstitutional, and that only one Chair, acting in the classic function of a Prime Minister, should be appointed.

The Court asked for the law governing the Council of Ministers to be changed by December of last year. But only half-hearted attempts were made, and no amendments to the law were adopted.

The deadline expired. Finally the Court had to come together again in February and declare the relevant provisions in the law invalid. The Council of Ministers, as it is presently constituted, became dysfunctional on the 10 February 2000.

Since then there have been various proposals for amendments to the Council of Ministers law. One was adopted by the House of Representatives, but subsequently voted down by the House of Peoples. At the moment there are four other proposals under parliamentary consideration. Needless to say, these proposals differ significantly from the recommendations in the Constitutional Court ruling. They all try to circumvent the essence of the decision, which means ruling out parity and, for practical reasons, makes a rotating Chair impossible.

I made my point quite clear to them: bickering about an amended law is not necessary. The Constitution, together with what the old Law on the Council of Ministers dictates, clearly explains how a new Chair should be elected. If there had been political will for compromise, the Presidency could by now have already nominated a candidate for Parliamentary approval. Instead, mutual distrust and a desire to safeguard the interests of ethnic parties has prevented any move forward.

Of course, without an executive, there is no institution for the International Community to negotiate with, nor even contractual partners to sign and approve offers of international assistance, nor any body capable of initiating new legislation.

Naturally, the ruling politicians are fully aware of this. But they could not care less. They are content merely to pay lip service to the International Community about their willingness to solve the issue.

When it comes to introducing legislation that contains elements of state-building, no compromise can be reached among the present body of ruling politicians. Far too often already,

I have had to make use of the powers vested in me by the International Community to impose laws. Without such impositions, there would be no progress at all. This was the case, for instance, with the State Border Service Law, which Parliament also failed to adopt.

Let me mention the problems we have had with the procedure to adopt the Draft Election Law. The Draft was submitted to the state Parliament almost six months ago; it was voted down twice in purely procedural votes.

Thus, so far the parliamentarians have not even had an opportunity to seriously discuss the substance of this Draft Law. Together with Ambassador Barry, Head of the OSCE Mission in Bosnia and Herzegovina, I have engaged in extensive discussions in order to find a solution acceptable to the local political parties. Unfortunately, without success.

I am very disappointed that Bosnia and Herzegovina's State Parliament cannot agree on such fundamental legislation that would regulate the democratic elections in this country. After so many years and a plethora of elections, Bosnia and Herzegovina still doesn't have a permanent election law.

Looking at the ministries at state level, all of which are equipped with representatives from the three constituent peoples, one finds that there is hardly any consultation going on between the representatives of those groups within the ministries, let alone between the ministries.

How can these politicians hope to formulate a government policy when they work against each other rather than co-operating? Instead, ministers react only to pressure from the outside. Of course, they continue to enjoy the benefits of public office all the while.

So much for the self-sustainability of the political process within Bosnia and Herzegovina.

The Council of Europe is the perfect haven for any young European country, struggling to build a democratic civil society that respects human rights and the rule of law.

Bosnia and Herzegovina is one such young country. And it is a country that carries a far greater burden from the past than any other applicant. The post-communist transformation process is hard enough to contend with. In addition, it must face this challenge while attempting to overcome the effects of a fully-fledged war, which involved foreign invasion and internal ethnic strife on a scale unparalleled in recent European history.

The subsequent distrust that that strife produced should never be underestimated. Asking the different ethnic groups to cooperate and to form a unitary state is a tall order in anybody's language.

Help, therefore, is urgently needed. The International Community who offered this help never expected to be planting a rose garden. They never expected instant success. We knew it would take a long time – far longer than in any other country.

That is why the Council of Europe started the process of integration a long time ago. And I admire the persistence of its engagement with this country.

More than two years ago, the leaders of Bosnia and Herzegovina were given a concrete – and realistic – list of homework to complete, the minimum requirement before accession could be considered.

This list of pre-conditions overlaps entirely with my role as High Representative. The process of attempting to fulfill them has been punctuated by numerous visits of representatives of the Council of Europe, and by many rounds of talks with local politicians on the ground.

Mind you, the accession process has borne fruit for which I am

most grateful. I need only mention the Law on the Ombudsman of the Republika Srpska, which established the Ombudsmen as a multi-ethnic institution, and the Law on Immigration and Asylum.

Nor should we forget Bosnia and Herzegovina's compliance – albeit partial – with the Decisions of the Human Rights Chamber, and with the recommendations of the Ombudsman. At present, there is compliance in approximately half of the cases. This is a positive development.

However, if we look at the overall performance, it is clear, as I have said, that far too many of the conditions have still not been met.

Apart from the Common Institutions – and the high-priority legislation that is still required (and of which I have given some examples) – there is the field of human rights and the rule of law to consider.

I should add that this is a field which I consider to be of crucial importance.

It is a telling story that, of the 40 Human Rights-based pre-conditions for accession to the Council of Europe, to date just seven have been met. It is equally telling that, of those seven, I have been forced to impose four!

Let me give you some details of the unmet conditions.

Today, there are no laws to establish the independent selection procedure for judges and prosecutors.

The funding of the Human Rights Institutions is still inadequate, as it is for the Constitutional Court.

A proper criminal code has still not been adopted, and nor has a code of criminal procedure.

There is also still little or no compliance with the European

Convention on Human Rights, of which BiH is supposed to be a signatory. A law on Citizenship, a law on Internal Affairs, a law guaranteeing the independence of NGOs, a law on conscientious objection – all these are still lacking.

Annex 7 of the Peace Agreement ensures the right of refugees and displaced persons to return to their homes. It is still far from being fully complied with.

We are still facing serious difficulties with the implementation of the Property Legislation Implementation Plan which ensures citizens' rights to their property.

This is one of the major obstacles to refugee return. Although we have had successes, official resistance to the process is still powerful in some places. In South West Mostar, for instance, less than 2% of the claimants wishing to return to socially owned housing have been processed. That, I am afraid, is tantamount to outright obstruction of the DPA.

Another telling example is the fact that the decisions of the Human Rights Chamber concerning former Yugoslav National Army apartments have not been implemented.

Finally – and perhaps most poignantly, given the crucial importance of the young people of Bosnia and Herzegovina – the education system is still governed by ethnic segregation.

The youth of BiH, I firmly believe, are the key to the country's future. Yet the school curriculae remain largely unreformed; textbooks still preach the politics of ethnic segregation, although the most offensive material have been removed. In some areas, official resistance – at the municipal level – to the concept of multi-ethnic schools continues unabated.

I have given you a rather sobering assessment of the situation we are faced with. At the same time, I am realist enough not to expect Bosnians to fulfill all the requirements in the

immediate future.

Ladies and Gentlemen: to my mind, urgent progress is needed if we are to achieve a state which functions at the most minimal level.

In addressing the CoE, the Presidency and Parliament recently committed themselves in writing to future post accession activities. As a principle, I welcome any commitment made by the authorities. However, you will excuse me for being blunt, when I say that both my predecessors and I would be rather wealthy if we had a penny for every promise made and not kept by Bosnia's politicians! Only when conditions are met rather than promised to be met can we be sure that BiH is ready for Europe.

The remedy may seem harsh – but I make no apologies. Sometimes it is necessary to be cruel to be kind.

Let me be clear about the priority conditions, which in my mind would be a sign that BiH is on the right track eventually:

First, we must insist on the basic functioning of the common institutions at state level. By this I mean the Presidency, the Council of Ministers with a Prime Minister, and the State Parliament. I am pleased to say that the Standing Committee on Military Matters, Central Bank and the Constitutional Court, are – albeit with continued support from the International Community – already working reasonably well.

Second, adoption of the draft Election Law

And third, implementation of the preconditions governing Human Rights. I should point out that we should look for credible progress in this field – not necessarily fulfillment of each and every one of them – prior to accession.

These three points I see as an achievable minimum requirement.

Given Bosnia and Herzegovina's special circumstances, I think they are fair and realistic at the same time. They are, after all, the very fundamentals of the DPA – which the parties agreed to four and a half years ago at Dayton. It is not as if we are asking them to do anything new: we are only asking them to fulfill what they have already agreed to.

Local politicians have argued recently that the International Community has deliberately obstructed Bosnia and Herzegovina's accession to the Council of Europe. My answer to these allegations was as follows:

Accession in itself is not a goal. It is an unfortunate fact that local politicians do not take seriously the offer of membership. They should work harder on fulfilling the pre-conditions. It would make no sense if Bosnia and Herzegovina became a member, and its representatives took part in discussions on human rights issues and the rule of law, if in turn these matters were not respected by the country they represented.

In any case, how effective a participant in the Council of Europe could Bosnia and Herzegovina hope to be, if they are unable to speak with one voice? That, to be frank, is what you would get if Bosnia and Herzegovina were encouraged to accede now.

In the end, it is for the members of the Council of Europe to decide.

But it is the duty of the officials and leaders of Bosnia and Herzegovina to meet the conditions that will make accession a reality. The responsibility lies with every level of government, be it the Presidency members, the members of the Council of Ministers, the members of the State and Entity parliaments, or the members of the Entity governments.

If they want to be a part of Europe, then the local leadership must demonstrate their ability to take decisions for

themselves. After all, it is their country – and they are responsible for its position in Europe.

I think we are not asking so much of Bosnia and Herzegovina's leadership. While it is clear that there is still a distance to go before the necessary conditions are met, I firmly believe that Bosnia and Herzegovina has all the necessary potential. Bosnia and Herzegovina will meet the standard – after they find the impulse to change.

The establishment of a self-sustaining, democratic state remains very much a "work in progress". I fully trust in your support for Bosnia and Herzegovina, and for my work there – which, I reiterate, is to further the goals laid out by the DPA, regardless of how local politicians behave.

We need to reach out to the people in the hope that they come to realize that they must take their fate in their own hands. The forthcoming municipal elections – and, indeed, the general election in the autumn – are an excellent opportunity for them to demonstrate this.

Let me just end with a plea that Bosnia and Herzegovina needs further political help in any case. Not all the lack of progress is due to simple obstructionism. Often, we are faced with inefficiency and inexperience with normal democratic practices. This is why I have asked in the past already that parliamentarians from your organisation get in closer touch with their colleagues in Bosnia and Herzegovina. An exchange of views on this working level might help representatives of Bosnia – and here especially the lawmakers – understand better the principles of democracy.

I hope I have provided you with an analysis that will be helpful in reaching the difficult decisions ahead of you regarding Bosnia and Herzegovina's accession to your organisation. I am confident that you will find the right path between applying the principles and ideals of the CoE to this

example, and the obvious beneficial influence that actual membership will have for the country.

Thank you.